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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 Coleman E Calloway,  
12                   Plaintiff,  
13                  v.  
14                  Jeremy Gill et al.,  
15                   Defendants.

CASE NO. 3:19-cv-06069-RBL-JRC

ORDER TO SHOW CAUSE OR  
AMEND COMPLAINT

16         Plaintiff Coleman E. Calloway, proceeding *pro se* and *in forma pauperis*, filed this civil  
17 rights complaint under 42 U.S.C. § 1983. Plaintiff alleges his constitutional rights were violated  
18 when he was pepper sprayed and placed in segregation after refusing to follow the directions of a  
19 corrections officer, defendant Gill. Having reviewed and screened plaintiff's complaint under 28  
20 U.S.C. § 1915A, the Court declines to serve plaintiff's complaint because plaintiff has yet to  
21 plead sufficient facts to demonstrate that defendants violated his constitutional rights. However,  
22 the Court provides plaintiff leave to file an amended pleading by January 4, 2020, to cure the  
23 deficiencies identified herein.

## BACKGROUND

In his complaint, plaintiff, who is currently housed at Coyote Ridge Corrections Center (“CRCC”), alleges that defendant Gill retaliated against him and used excessive force, and he was subjected to inhumane conditions of confinement. Dkt. 6.

Plaintiff alleges that on November 11, 2017, defendant Gill announced a directive over the speaker system that plaintiff did not understand. Dkt. 6 at 3. Plaintiff alleges that he approached the officers' station and asked defendant Gill for clarification of the directive. *Id.* Plaintiff alleges that defendant Gill stated, "I do not want those offenders standing there watching the game." *Id.* Plaintiff alleges that he responded by saying that "sex offenders cannot sit down and watch T.V. so could you give them a [break] and let them watch the game it's Thanksgiving!" *Id.*

Plaintiff alleges that defendant Gill became aggravated which plaintiff assumed was because plaintiff didn't feel the same way towards sex offenders as defendant Gill. *Id.* Plaintiff alleges that defendant Gill accused plaintiff of being argumentative. *Id.* Plaintiff responded that he was not arguing and began to "retreat." *Id.* Plaintiff alleges that defendant Gill demanded that plaintiff "cell up." *Id.* Plaintiff asked defendant Gill what he had done wrong. *Id.* Plaintiff alleges that defendant Gill "aggressively" yelled "cell up or cuff up." *Id.*

Plaintiff alleges that he said “I don’t know what is going on with you. But I want to talk with Sgt. Todd.” *Id.* at 3. Plaintiff alleges that defendant Gill then became “enraged” and started yelling, swearing, and cursing. *Id.* Plaintiff alleges that he ran away towards Sgt. Todd. *Id.* Plaintiff alleges that defendant Gill then attacked plaintiff by spraying him with pepper spray. *Id.*

Plaintiff alleges that he was placed in segregation where he was abused and degraded. *Id.*  
Plaintiff alleges that he was stripped down and sprayed with ice cold water which caused

1 “serious burning.” *Id.* at 3-4. Plaintiff alleges that pepper spray got into his eyes and caused an  
2 ear ache. *Id.* at 4. Plaintiff alleges that he suffers psychological damage, has lived in fear for the  
3 last two years, and has become reclusive. *Id.*

4 Plaintiff seeks monetary damages. Dkt. 6.

5 DISCUSSION

6 Under the Prison Litigation Reform Act of 1995 (“PLRA”), the Court is required to  
7 screen complaints brought by prisoners seeking relief against a governmental entity or officer or  
8 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the  
9 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to  
10 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant  
11 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,  
12 152 F.3d 1193 (9th Cir. 1998).

13 In order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must sufficiently  
14 allege that: (1) he suffered a violation of rights protected by the Constitution or created by  
15 federal statute, and (2) the violation was proximately caused by a person acting under color of  
16 state law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983  
17 claim is therefore to identify the specific constitutional right allegedly infringed. *Albright v.*  
18 *Oliver*, 510 U.S. 266, 271 (1994). To satisfy the second step, a plaintiff must allege facts  
19 showing how individually named defendants caused, or personally participated in causing, the  
20 harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

21 Plaintiff’s complaint does not sufficiently allege these claims, which will result in  
22 dismissal of his case if not corrected in an amended complaint.

1      **A. Retaliation**

2      Plaintiff alleges that defendant Gill retaliated against him. Dkt. 6. “[A] prison inmate  
3 retains those First Amendment rights that are not inconsistent with his status as a prisoner or with  
4 the legitimate penological objectives of the corrections system.” *Johnson v. California*, 543 U.S.  
5 499, 510 (2005) (quoting *Pell v. Procunier*, 417 U.S. 817, 822 (1974)). To prevail on a  
6 retaliation claim, a plaintiff must allege and prove the defendants retaliated against him for  
7 exercising a constitutional right and the retaliatory action did not advance legitimate penological  
8 goals or was not narrowly tailored to achieve such goals. *Hines v. Gomez*, 108 F.3d 265, 267 (9th  
9 Cir. 1997). A prisoner suing a prison official under § 1983 for retaliation for engaging in  
10 protected speech must allege “the type of activity he engaged in was protected under the first  
11 amendment and that the state impermissibly infringed on his right to engage in the protected  
12 activity.” *Rizzo v. Dawson*, 778 F.2d 527 (9th Cir. 1983).

13     Within the prison context, a viable claim of First Amendment retaliation entails five  
14 basic elements: (1) An assertion that a state actor took some adverse action against  
15 an inmate (2) because of (3) that prisoner’s protected conduct, and that such action  
16 (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action  
17 did not reasonably advance a legitimate correctional goal.

18     *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005). “Mere speculation that defendants  
19 acted out of retaliation is not sufficient.” *Wood v. Yordy*, 753 F.3d 899, 905 (9th Cir. 2014).

20     Plaintiff alleges that he was pepper sprayed and for making remarks to defendant Gill.  
21 Dkt. 6. However, plaintiff’s own allegations add that in addition to his statements of criticism, he  
22 defied two orders from defendant Gill to go to his cell and attempted to physically run away  
23 from defendant Gill. Dkt. 6. at 3. Thus, according to the complaint, plaintiff was not pepper  
24 sprayed simply for what he said. *Id.* Rather, as the complaint explains, plaintiff refused to  
comply with defendant Gill’s directive and was trying to physically evade defendant while

1 challenging defendant Gill's directive. Plaintiff has supplied the non-retaliatory motivation for  
2 defendant Gill's actions. Namely, his failure to follow defendant Gill's directive and orders to  
3 return to his cell. Plaintiff has not alleged any facts demonstrating that plaintiff's remarks alone  
4 motivated defendant Gill to take action. Accordingly, plaintiff fails to state a First Amendment  
5 retaliation claim against defendant Gill. Plaintiff must show cause why this claim should not be  
6 dismissed.

7 **B. Excessive Force**

8 Although the complaint is not entirely clear, it appears that plaintiff alleges that defendant  
9 Gill used excessive force when he sprayed plaintiff with pepper spray. *See Dkt. 6.*

10 When a prison official authorizes the use of excessive force against a prisoner, that  
11 official violates the prisoner's Eighth Amendment right to be free of cruel and unusual  
12 punishment. *Clement v. Gomez*, 298 F.3d 898, 903 (9th Cir. 2002). Force does not amount to a  
13 constitutional violation if it is "applied in a good faith effort to restore discipline and order and  
14 not 'maliciously and sadistically for the very purpose of causing harm.'" *Id.* (quoting *Whitley v.*  
15 *Albers*, 475 U.S. 312, 320-21 (1986)).

16 In determining whether force was excessive, the court considers the following factors: (1)  
17 the need for application of force; (2) the extent of the injuries; (3) the relationship between the  
18 need for force and the amount of force used; (4) the nature of the threat reasonably perceived by  
19 prison officers; and (5) efforts made to temper the severity of a forceful response. *See Hudson v.*  
20 *McMillian*, 503 U.S. 1, 7 (1992). Because the use of force relates to the prisoner's legitimate  
21 penological interest in maintaining security and order, the court must be deferential to the  
22 conduct of prison officials. *See Whitley*, 475 U.S. at 321–22.

1 Plaintiff has not alleged facts demonstrating that defendant Gill used pepper spray  
2 “maliciously and sadistically for the very purpose of causing harm.” *See Hudson*, 503 U.S. at 6.  
3 Rather, plaintiff’s allegations that defendant Gill’s used pepper spray after plaintiff refused to  
4 comply with two orders to return to his cell falls within the wide-range of deference accorded to  
5 prison officials in shaping ““prophylactic or preventive measures intended to reduce the  
6 incidence of ... breaches of prison discipline.” *Whitley v. Albers*, 475 U.S. 312, 322 (1986).  
7 Further, while plaintiff alleges that the pepper spray got in his eyes and he had an ear ache for  
8 several days, plaintiff fails to allege any facts demonstrating that he suffered any serious injuries  
9 or required follow up medical treatment as a result of his exposure to the pepper spray.

10 Accordingly, plaintiff has not sufficiently alleged facts supporting an excessive force  
11 claim against defendant Gill. If plaintiff wishes to pursue this claim, he must provide an  
12 amended complaint with a short, plain statement explaining how defendant Gill’s actions  
13 violated plaintiff’s constitutional rights and what harm plaintiff suffered as a result.

14 **C. Conditions of Confinement**

15 Plaintiff alleges that his Eighth Amendment rights were violated when he was subjected  
16 to cruel and unusual punishment. Dkt. 6.

17 The Constitution does not mandate comfortable prisons, but neither does it permit  
18 inhumane prisons. *Farmer v. Brennan*, 511 U.S. 825, 832 (1970). Under the Eighth Amendment,  
19 prison officials are required to provide prisoners with basic life necessities, such as food,  
20 clothing, shelter, sanitation, medical care, and personal safety. *Id.* “To violate the Cruel and  
21 Unusual Punishments Clause, a prison official must have a sufficiently culpable state of mind.”  
22 *Id.* at 834 (internal quotations omitted). “In prison-conditions cases th[e] state of mind is one of  
23 ‘deliberate indifference’ to inmate health or safety[.]” *Id.* (*citing Wilson v. Seiter*, 501 U.S. 294,  
24

1      302-03 (1991)). To violate the Cruel and Unusual Punishments Clause, a prison official must have  
2      a sufficiently culpable state of mind.” *Farmer*, 511 U.S. at 834 (internal quotations omitted). “In  
3      prison-conditions cases th[e] state of mind is one of ‘deliberate indifference’ to inmate health or  
4      safety[.]” *Id.* (citing *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991)). A prison official does not act  
5      with deliberate indifference “unless the official knows of and disregards an excessive risk to  
6      inmate health or safety.” *Farmer*, 511 U.S. at 837.

7            In addition, to state a claim under 42 U.S.C. § 1983, plaintiff must allege facts showing  
8      how a defendant caused or personally participated in causing the harm alleged in the complaint.  
9      *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *Arnold*, 637 F.2d at 1355. A person subjects  
10     another to a deprivation of a constitutional right when committing an affirmative act,  
11     participating in another’s affirmative act, or omitting to perform an act which is legally required.  
12     *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Plaintiff’s complaint fails to identify any  
13     defendant who personally participated in the alleged constitutional violation. *See Jones v.*  
14     *Community Development Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (vague and mere conclusory  
15     allegations unsupported by facts are not sufficient to state section 1983 claims).

16           Plaintiff alleges that he was humiliated, belittled, abused, and degraded. Dkt. 6 at 3.  
17           Plaintiff alleges that he was stripped down, told to bow down on his knees, and sprayed with ice  
18     cold water. *Id.* Plaintiff alleges that the water caused serious burning. *Id.* at 4. However, plaintiff  
19     has not identified any defendant who disregarded an excessive risk to his health or safety. The  
20     facts as alleged by plaintiff demonstrate that plaintiff was decontaminated with cold water  
21     immediately after the incident to minimize the effect of the pepper spray.

22           Accordingly, plaintiff has not sufficiently alleged facts supporting a claim of cruel and  
23     unusual punishment against any of the named defendants. If plaintiff wishes to pursue this  
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1 claim, he must provide an amended complaint with a short, plain statement explaining exactly  
2 what actions were taken by each defendant, how each defendant's actions violated plaintiff's  
3 constitutional rights, what harm plaintiff suffered as a result, and whether any of the named  
4 defendants had knowledge of plaintiff's harm or risk of harm.

5 **D. Defendant Sinclair**

6 Plaintiff names defendant Sinclair, "Director State of Washington Department of  
7 Corrections," in his complaint, but fails to allege any factual allegations against him. *See* Dkt. 6.  
8 In order to state a civil rights claim, a plaintiff must set forth the specific factual basis upon  
9 which he claims each defendant is liable. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.  
10 1980). A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of  
11 supervisory responsibility or position. *Monell v. Dept. of Soc. Serv. Of New York*, 436 U.S. 658,  
12 694 n.58 (1978); *Padway v. Palches*, 665 F.2d 965, 967 (9th Cir. 1982). Rather, each defendant  
13 must have personally participated in the acts alleged. *Id.* "A supervisor is only liable for  
14 constitutional violations of his subordinates if the supervisor participated in or directed the  
15 violations, or knew of the violations and failed to act to prevent them." *Taylor*, 880 F.2d at  
16 1045. Vague and conclusory allegations of official participation in civil rights violations are not  
17 sufficient to withstand a motion to dismiss. *Peña v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992).  
18 A plaintiff can prove causation under § 1983 only if plaintiff demonstrates a defendant did an  
19 affirmative act, participated in another's affirmative act, or omitted to perform an act which he  
20 was legally required to do that caused the deprivation complained of. *Arnold*, 637 F.2d at 1355  
21 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743–44 (9th Cir. 1978)). Even construing plaintiff's  
22 amended complaint liberally, he has failed to allege sufficient facts to support a claim against  
23 defendant Sinclair. Plaintiff does not allege how defendant Sinclair was involved in the alleged  
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1 constitutional violations or how defendant Sinclair violated his rights in any way. *See Leer v.*  
2 *Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (finding a plaintiff must show how a defendant  
3 caused or personally participated in causing the harm alleged in the complaint).

4 Accordingly, plaintiff has not sufficiently alleged facts supporting a claim under the  
5 against defendant Sinclair. If plaintiff wishes to pursue a claim against defendant Sinclair, he  
6 must provide an amended complaint with a short, plain statement explaining exactly what actions  
7 were taken by defendant Sinclair, how defendant Sinclair's actions violated plaintiff's  
8 constitutional rights, what harm plaintiff suffered as a result, and whether defendant Sinclair had  
9 knowledge of plaintiff's harm or risk of harm.

10 **C. Instructions to Plaintiff and the Clerk**

11 Due to the deficiencies described above, the Court will not serve plaintiff's complaint. If  
12 plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an amended  
13 complaint and within the amended complaint, he must write a short, plain statement telling the  
14 Court: (1) the constitutional right plaintiff believes was violated; (2) the name or names of the  
15 person or persons who violated the right; (3) exactly what each individual or entity did or failed  
16 to do; (4) how the action or inaction of each individual or entity is connected to the violation of  
17 plaintiff's constitutional rights; and (5) what specific injury plaintiff suffered because of the  
18 individuals' conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

19 Plaintiff shall present the amended complaint on the form provided by the Court. The  
20 second amended complaint must be legibly rewritten or retyped in its entirety, it should be an  
21 original and not a copy, it should contain the same case number, and it may not incorporate any  
22 part of the original complaint by reference. The amended complaint will act as a complete  
23 substitute for the original complaint, and not as a supplement. An amended complaint

1      supersedes all previous complaints. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir.  
2      1997) *overruled in part on other grounds*, *Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir.  
3      2012). Therefore, the amended complaint must be complete in itself and all facts and causes of  
4      action alleged in the original complaint that are not alleged in the amended complaint are  
5      waived. *Forsyth*, 114 F.3d at 1474. The Court will screen the amended complaint to determine  
6      whether it contains factual allegations linking each defendant to the alleged violations of  
7      plaintiff's rights. The Court will not authorize service of the amended complaint on any  
8      defendant who is not specifically linked to a violation of plaintiff's rights.

9                If plaintiff fails to file an amended complaint or fails to adequately address the issues  
10     raised herein on or before January 4, 2020, the undersigned will recommend dismissal of this  
11     action pursuant to 28 U.S.C. § 1915.

12               The Clerk is directed to send plaintiff the appropriate forms for filing a 42 U.S.C. § 1983  
13     civil rights complaint and for service. The Clerk is further directed to send copies of this Order  
14     and Pro Se Instruction Sheet to Plaintiff.

15               Dated this 4th day of December, 2019.

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19               J. Richard Creatura  
20               United States Magistrate Judge  
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